

FACILITY USE LEASE

This Facility Use Lease Agreement ("this Agreement") is executed to be effective the (the "Effective Date"), between the City of Surprise, an Arizona municipal corporation (the "City"), and _____, a limited liability corporation, ("Lessee").

WHEREAS, the City Of Surprise is the owner of certain real property located at 12425 W. Bell Road in Surprise Arizona (the "Property") is located; and

WHEREAS, Lessee desires to occupy _____ square feet of Building A; and

WHEREAS, the City is willing to grant to Lessee a lease to use the Lease Area for the aforementioned purpose, subject to the requirements of this Agreement.

THEREFORE, in consideration of the following mutual covenants and conditions, it is hereby agreed as follows:

1. LEASE AREA.

The Lease Area includes and is limited to the following areas as also depicted in the Site Plan:

- A. _____, as depicted in the site plan attached hereto as Exhibit A (the "Site Plan");
- B. Reasonable access to the Lease area.

2. RIGHT TO USE COMMON AREAS

Lessee and Lessee's agents, contractors, customers, directors, employees, invitees, officers, and patrons (collectively, the "Lessee's Permittees") have a non-exclusive privilege and lease to use, during the Lease Term, the Common Areas in common with all other Lessees, occupants, and authorized users thereof and their respective Permittees. For purposes of this Lease: (a) "Property" consists of the buildings located at 12425 W. Bell Road of which the Lease Area occupies part more particularly set forth in paragraph 1 and Exhibit A, (b) "Common Areas" consist of those areas within the Property not Leased to any Lessee and which are intended by City to be available for the use, benefit, and enjoyment of all occupants of the Property. All "Automobile Parking Areas" are Common Areas, but certain parking areas may be restricted to use by certain occupants.

As used in this Lease, "Interior Common Facilities" means lobbies, corridors, hallways, foyers, restrooms, mail rooms, mechanical and electrical rooms, janitor closets, and other similar facilities used by Lessees or for the benefit of Lessees on a non-exclusive basis.

Common Area Maintenance fees ("CAM charges") may be assessed by the City of Surprise on an as-needed basis and shall be calculated on the basis of actual cost times the percentage of rentable square feet occupied by the Lessee. The City of Surprise reserves the right to modify CAM charges to cover costs incurred by tenant occupancy of the facility.

3. PARKING

City shall operate and maintain or cause to be operated and maintained a parking area, of which the Property is a part. The "Automobile Parking Area" is for the benefit and use of all Lessees of the Building and their Permittees, as well as Lessees and permittees of the commercial office building located on the Property. However, City may in its sole discretion reserve parking spaces and any area(s) designated by City as being for reserved parking shall not be accessible or available for use by all Lessees or by the general public.

Lessee's right to use the Automobile Parking Area as herein provided is solely for the accommodation of Lessee. City assumes no responsibility or liability of any kind whatsoever from any cause of action with respect to the use thereof by Lessee or its agents, employees or guests, all of whom shall be deemed to have assumed all risks or to have released City from all liability in connection with the utilization thereof.

City may restrict or move reserved and unreserved parking spaces from time to time for repairs or maintenance to the parking lot in connection with construction at or deliveries to the Property or for any other reason deemed reasonable and appropriate by City.

City has the right to establish and from time to time change, alter, and amend, and to enforce against all users of the Automobile Parking Areas, reasonable rules and regulations (the "Parking Rules and Regulations"), the exclusion of employee parking from certain areas and the assignment of spaces to Lessees, and other requirements as may be deemed necessary and advisable for the proper and efficient operation and maintenance of said Automobile Parking Areas including, without limitation, the hours during which the Automobile Parking Areas shall be open for use, and Lessee shall cause Lessee's Permittees to comply therewith.

City may establish such reasonable charges as City deems appropriate for the use of the Automobile Parking Areas by persons who have not leased space in the Property. Lessee acknowledges that the parking area includes additional unreserved parking spaces that are available for use by the general public. These parking spaces may also be used on a reasonable basis by Lessee, Lessee's employees, and Lessee's business invitees without additional charge to the extent such spaces are available. City makes no representations, warranties, or assurances that such additional spaces shall be available at all times or at any time during the Lease Term.

4. CITY'S REPRESENTATIONS AND WARRANTIES.

A. The City represents and warrants to Lessee that: (1) the City has full right, power and authority to execute this Agreement; (2) the City has good and unencumbered title to the Lease Area free and clear of any liens or mortgages, except those disclosed to Lessee that will not interfere with Lessee's right to use the Lease Area; and (3) the City's execution and performance of this Agreement will not violate any laws, ordinances, covenants, mortgages, leases or other agreements binding on the City.

B. Lessee has studied and inspected the Lease Area and accepts the same "AS IS" without any express or implied warranties of any kind, other than those warranties contained in subsection (A), including any warranties or representations by the City as to its condition or fitness for any use. Lessee has inspected the Lease Area and its environs and obtained such information and professional advice as Lessee has determined to be necessary related to this Agreement.

5. GRANT OF LEASE; TERM; TERMINATION WITHOUT CAUSE.

The City grants to Lessee the right to use the Lease Area subject to the following provisions and conditioned upon Lessee's timely and complete performance of all of its obligations hereunder:

A. Nothing in this Agreement shall be construed as granting Lessee the authority to use any property that is owned by any person or entity other than the City.

B. The term of this Agreement shall be for a period of five (5) years, commencing on the Effective Date and ending on _____ unless sooner terminated as hereinafter set forth. The parties may agree to extend this Agreement an additional five (5) years, so long as such agreement is made in writing by representatives of both parties with appropriate signatory authority. Notwithstanding anything in this Agreement to the contrary, each party shall have the right, in its sole discretion and without cause, to terminate this Agreement by giving the other party 60 days written notice at any time.

C. In any circumstance whereby Lessee would continue to occupy the Lease Area after the expiration or termination of this Agreement, unless otherwise negotiated, such holding over shall not be deemed to operate as a renewal or extension of this Agreement, and Lessee shall pay the City rent in an amount that is double the maximum amount of rent otherwise due under Section 6 for such hold-over period.

D. Lessee's sole remedy for any breach or threatened breach of this Agreement by the City shall be an action for damages. Lessee's rights hereunder are subject to all covenants, restrictions, easements, agreements, reservations and encumbrances upon, and all other conditions of title to, the Lease Area. Notwithstanding the preceding sentence, the City shall provide to Lessee peaceable use and enjoyment of the Lease Area in accordance with the terms of this Agreement. Lessee's rights hereunder are further subject to all present and future building restrictions, regulations, zoning laws, ordinances, resolutions and orders of any local,

state or federal agency, now or hereafter having jurisdiction over the Lease Area or Lessee's use thereof.

6. RENT.

A. As rent for its right to use the Lease Area, Lessee shall pay, without notice and free from all claims, deductions and setoffs against the City, rent in the amount of: _____

B. Lessee shall pay the rent due for the current month in advance on the first day of each month. If the Effective Date is not on the first day of a month, Lessee's first month's rent shall be prorated accordingly.

C. If Lessee fails to pay any rent in full on or before the due date, Lessee shall be responsible for interest on the unpaid principal balance at the rate of 18% per annum from the due date until payment in full is made.

7. SECURITY DEPOSIT

Upon execution of this Lease, Lessee shall deposit with City the Security Deposit in an amount of one-and-a-half (1 ½) times the initial monthly rent as security for the full and faithful performance of each and every term, condition, covenant, and provision of this Lease.

If Lessee defaults in any of the terms, conditions, covenants, and provisions of this Lease, including, but not limited to, the payment of Rent or other charges, City may, but need not, apply all or part of the Security Deposit, not as liquidated damages, but for the payment of any Rent or charge then due or for any other sum which City may spend, or be required to spend, by reason of Lessee's default. If any portion of the Security Deposit is so used, Lessee shall, no later than five (5) calendar days following demand, deposit cash with City in an amount sufficient to restore the Security Deposit to its original amount. Lessee's failure to do so shall be a material breach of this Lease. Should Lessee fully and faithfully comply with all of the terms, conditions, covenants, and provisions of this Lease, the Security Deposit, or any balance thereof, shall be returned to Lessee or, at the option of City, to the last assignee of Lessee's interest in this Lease, within ten (10) days after the Expiration Date and surrender of the Premises by Lessee. City's rights regarding the Security Deposit are in addition to and do not preclude any other rights, remedies, or recoveries available to City by law or pursuant to this Lease. Lessee acknowledges that the Security Deposit is not an advance payment of Minimum Monthly Rent, Additional Rent, or any other charges owing under the Lease; is not a payment of "last month's rent"; and does not constitute a payment by Lessee of any sums owing pursuant to this Lease except the Security Deposit required by this Section 9.

8. UTILITIES.

Lessee shall be responsible for obtaining and paying for all utilities necessary to operate within the lease area.

9. USE RESTRICTIONS.

Lessee's use and occupation of the Lease Area shall conform to all of the following provisions:

- A. Without the prior approval of City, Lessee shall not use the Premises for any use other than for the purpose of operating a restaurantLessee.
- B. Comply with all statutes, ordinances, rules, regulations, and orders of all municipal, state, and federal authorities now in force or which may hereafter be in force pertaining to the use of the Premises, and shall not use or permit the Premises to be used in whole or in part for any purpose or use in violation of any of said laws, ordinances, rules and regulations;
- C. Keep the Premises in a neat, sanitary, and orderly condition, free of debris, and shall not deposit or allow others to deposit trash, waste, or debris within Common Areas except within designated areas. If required by Health Department or requested by City, Lessee shall provide and maintain sanitary receptacles approved by City in and about the interior and exterior of the Premises in which to place any refuse or trash, and Lessee shall cause such refuse or trash to be removed from the area as often as required to maintain a sanitary condition, but in no event less often than twice weekly. Lessee shall sweep as needed and keep free of refuse the sidewalks and areas immediately adjacent to the Premises.
- D. Not conduct or permit to be conducted any auction sale on or about the Premises, whether such auction be voluntary or involuntary. Lessee shall not display merchandise, nor permit merchandise to remain, outside the exterior walls and permanent doorway of the Premises unless otherwise permitted by City;
- E. Not commit, or allow others to commit, any waste upon the Premises, Building, Common Areas or Land;
- F. Not engage, or allow others to engage, in any activity that has the likelihood of increasing the existing premium rate of insurance on the Premises, Building or Building Common Areas or potentially cause a cancellation of any insurance policy or permit to remain in or about any such area any item that may be prohibited by standard form fire insurance policies;
- G. Not use, or allow others to use, the Premises, Building or Common Areas for any offensive, noisy, or dangerous trade, business, or occupation, or any activity against

public policy, or interfere with the business of or disturb the quiet enjoyment of any other Lessee in the Building or Land;

- H. Not use, or allow others to use, the exterior of the roof or walls of the Premises or the Building for any purpose;
- I. Not display anything in any windows without prior written consent of City;
- J. Not use or allow others to use the Common Areas for purposes other than the purposes intended for such areas;
- K. Faithfully observe and comply (and cause Lessee's Permittees to observe and comply) with the Rules and Regulations (Exhibit B), the Parking Rules and Regulations described in Section 3, and all reasonable and nondiscriminatory modifications of and additions thereto; and
- L. Not use, generate, manufacture, transport to or from, store, or dispose of, in, under, or about the Premises, the Building, the Land, or the Automobile Parking Area, any Hazardous Materials. For purposes of this Lease, "Hazardous Materials" includes, but is not limited to: (i) flammable, explosive, or radioactive materials, hazardous wastes, toxic substances, or related materials; (ii) all substances defined as "hazardous substances," "hazardous materials," "toxic substances," or "hazardous chemical substances or mixtures" in the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended, 42 U.S.C. § 9601, et seq., as amended by Superfund Amendments and Reauthorization Act of 1986; the Hazardous Materials Transportation Act, 49 U.S.C. § 1901, et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. § 6901, et seq.; the Toxic Substances Control Act, 15 U.S.C. § 2601, et seq.; (iii) those substances listed as hazardous substances in the United States Department of Transportation Table (49 CFR 172. 10 and amendments thereto) or by the Environmental Protection Agency (or any successor agent) (40 CFR Part 302 and amendments thereto); (iv) any material, waste, or substance which is (A) petroleum, (B) asbestos, (C) polychlorinated biphenyls, (D) designated as a "hazardous substance" pursuant to § 311 of the Clean Water Act, 33 U.S.C. § 1251 et seq. (33 U.S.C. § 1321) or listed pursuant to the Clean Water Act (33 U.S.C. § 1317); and (v) all substances defined as "hazardous wastes" in *Arizona Revised Statutes* §36-3501(16).

10. SIGNS

Lessee shall not erect or place any sign, lettering, design, banner, decoration, exterior lighting or other advertising device or material either outside the Premise, or inside the Premises if visible from outside the Premises, without the prior written approval of City. Notwithstanding the foregoing, Lessee agrees to install not later than thirty (30) days following the commencement of the Lease Term, at Lessee's expense, an identification sign for the Premises complying with all applicable governmental ordinances, approved in advance by City and conforming in all respects

to the sign criteria established for the Building. All expenses in connection with the operation and maintenance of such sign shall be paid by Lessee. Any signs of Lessee not in conformity with this Lease and any signs remaining at the end of the Lease Term shall, upon City's demand, be immediately removed by Lessee at its expense, and Lessee shall promptly repair any damage to the Premises resulting from such removal.

11. LESSEE'S IMPROVEMENTS; GENERAL REQUIREMENTS.

The following provisions shall govern all improvements, repairs, installation and other construction, removal, demolition or similar work of any description by Lessee related to the Lease Area (collectively referred to as "Lessee's Improvements"):

A. All of Lessee's Improvements shall be designed and purchased at Lessee's sole expense. In no event, including termination of this Agreement for any reason, shall the City be obligated to compensate Lessee in any manner for any of Lessee's Improvements or other work provided by Lessee during or related to this Agreement. Lessee shall timely pay for all such labor, materials and work and all professional and other services related thereto and shall defend, indemnify and hold harmless the City against all such claims.

B. All work performed on the Lease Area by Lessee shall be performed in a workmanlike manner, as reasonably determined by the City, and shall be diligently pursued to completion and in conformance with all building codes and similar rules. All of Lessee's Improvements shall be high quality, safe, modern in design and attractive in appearance, all as approved by the City, which approval shall not be unreasonably withheld, conditioned or delayed.

C. Lessee acknowledges that as of the date of execution of this Agreement, the City has not approved or promised to approve any plans for Lessee's Improvements, except to the extent expressly stated in this Agreement.

D. Lessee shall make no structural alterations, modifications, additions or other significant construction work to the Lease Area without having first received the written consent of the City, which consent shall not be unreasonably withheld, conditioned or delayed. Such review shall include all improvements, equipment, fixtures, paint and other construction work of any description as described in all plans delivered by Lessee to the City. All such plans and construction are subject to inspection and final approval by the City as to colors, materials, site plan, design, function and appearance.

E. Lessee shall keep as-built records of Lessee's Improvements and shall furnish copies of such records to the City, at no cost to the City, upon completion of such improvements and any changes to the same.

F. All changes to utility facilities shall be limited to the Lease Area and shall be undertaken by Lessee only with the written consent of the City, which consent shall not be unreasonably withheld, conditioned or delayed.

G. All of Lessee's Improvements shall be designed so as to present uniformity of design, function, appearance and quality throughout and consistency with other improvements located on the Property.

H. The following procedure shall govern Lessee's submission to the City of all plans for the Lease Area and Lessee's Improvements, including any proposed changes by Lessee of previously approved plans:

1. Lessee shall coordinate with the City as necessary on significant design issues prior to preparing plans to be submitted hereunder.
2. Upon execution of this Agreement, the City and Lessee shall each designate a project manager to coordinate the parties' participation in designing and constructing Lessee's Improvements. Each project manager shall devote such time and efforts to the project as may be necessary for timely, good faith and convenient coordination among all persons involved with the project and compliance with this Agreement. The City's project manager will not be exclusively assigned to this Agreement or Lessee's Improvements.
3. No plans shall be deemed approved until stamped "APPROVED" and dated by the City's project manager.
4. No final plans shall be deemed approved until Lessee delivers to the City a formal certification by a qualified engineer acceptable to the City to the effect that all of Lessee's Improvements are properly designed to be safe and functional as designed and as required by this Agreement. Such certification shall be accompanied by and refer to such backup information and analysis as the City may reasonably require.
5. Lessee acknowledges that the City's project manager's authority with respect to the Lease Area is limited to the administration of the requirements of this Agreement. Lessee shall be responsible to secure all zoning approvals, design revisions or other governmental approvals and to satisfy all governmental requirements pertaining to the project and shall not rely on the City or the City's project manager for any of the same.
6. The City's issuance of building permits shall not constitute approval of any plans for purposes of this Agreement. The City's project manager shall be reasonably available to coordinate and assist Lessee in working through issues that may arise in connection with such plan approvals and requirements.
7. Lessee shall, in the submittal of all plans, allow adequate time for all communications and plan revisions necessary to obtain approvals and shall schedule its performances hereunder and revise its plans as necessary to timely obtain all approvals.

8. If the City does not timely review Lessee's plans, mark Lessee's plans with changes necessary in order to approve the plans, or approve the revised plans in accordance with the City's normal plan-review procedures, the City's failure to timely process such plans shall not be deemed to be an approval of the plans but shall operate to extend Lessee's construction deadlines. Any rejections of Lessee's plans shall be in writing.

9. Lessee shall provide the City with two complete sets of detailed plans and specifications of the work as completed.

I. Prior to the commencement of any construction on the Lease Area, Lessee shall provide the City with payment and performance bonds in amounts equal to the full amount of the written construction contract pursuant to which such construction is to be done. The payment bond shall be solely for the protection of claimants supplying labor or materials for the required construction work, and the performance bond shall be solely for the protection of the City, conditioned upon the faithful performance of the required construction work. Each bond shall be executed by a surety company duly authorized to do business in Arizona and acceptable to the City.

Following the completion of the Lessee Improvements, Lessee may place partitions and fixtures and may make improvements and other alterations to the interior of the Premises at Lessee's expense, provided that Lessee shall not be permitted to do any structural work or work that affects the structural integrity of the Building; and further provided that, prior to commencing any such work, Lessee shall first obtain the written consent of City to the proposed work, by submitting to City for City's approval: (a) complete plans and specifications for the proposed work (which consent shall not be unreasonably withheld); (b) the name of the proposed architect and/or contractor(s) for such alterations and/or improvements; (c) the materials to be used in connection with such alterations, including, without limitation, paint, carpeting, wall or window coverings and the use of carpet glues and other chemicals for installation of such materials; and (d) evidence of Lessee's financial ability to complete the construction. Such submissions to City shall be made at least ten (10) days prior to the commencement of any construction in the Premises. City may require that the work be done by City's own employees, its construction contractors, or under City's direction, but at the expense of Lessee; and City may, as a condition to consenting to such work, require that Lessee provide financial security adequate in City's judgment so that the improvements or other alterations to the Premises will be completed in a good, workmanlike and lien free manner. City may also require that any work done to the interior of the Premises be subject to the supervision of City or its designee. All such improvements or alterations must conform to and be in substantial accordance in quality and appearance with the quality and appearance of improvements in a first-class commercial building. All such improvements shall become the property of City. In the event City consents to the use by Lessee of its own architect and/or contractor for the installation of any such alterations or improvements, prior to the commencement of such work, Lessee shall provide City with evidence that Lessee's contractor has procured worker's compensation, liability and property damage insurance (naming City as an additional insured) in a form and in an amount approved by City, and evidence that Lessee's architect and/or contractor has procured the necessary

permits, certificates and approvals from the appropriate governmental authorities. Lessee acknowledges and agrees that any review by City of Lessee's plans and specifications and/or right of approval exercised by City with respect to Lessee's architect and/or contractor is for City's benefit only and City shall not, by virtue of such review or right of approval, be deemed to make any representation, warranty or acknowledgment to Lessee or to any other person or entity as to the adequacy of Lessee's plans and specifications or as to the ability, capability or reputation of Lessee's architect and/or contractor.

12. FIXTURES; PERSONAL PROPERTY; AND SURRENDER OF PREMISES

All trade fixtures installed by Lessee and movable furniture that is not permanently affixed to the Premises shall remain the property of Lessee and may be removed by Lessee not later than the Expiration Date or the earlier termination of (a) the Lease Term or (b) Lessee's right to possession, provided that Lessee is not in default hereunder at the time of the proposed removal and further provided that there is no Rent or other charges then due hereunder. Lessee shall promptly repair, at its own expense, any damage resulting from such removal. If Lessee fails to remove its personal property, trade fixtures, and moveable furniture upon the Expiration Date or the earlier termination of the Lease Term or Lessee's right to possession, the same shall be deemed abandoned and shall become the property of City. Notwithstanding the foregoing, at any time during the Lease Term or thereafter City may require Lessee to remove any personal property placed in the Premises by Lessee or by others at Lessee's direction or with Lessee's actual or implied consent, if the same is dangerous, illegal, or actually or potentially an environmental hazard, and repair any damage caused thereby.

- A. Movements of Lessee's property into or out of the Building and within the Building are entirely at the risk and responsibility of Lessee and City reserves the right to require permits before allowing any such property to be moved into or out of the Building.
- B. All cabinetry, built-in appliances, wall coverings, floor coverings, window coverings, electrical and plumbing fixtures and conduits, lighting, and other special fixtures that may be placed upon, installed in, or attached to the Premises by Lessee shall, at the Expiration Date or earlier termination of this Lease for any reason, become the property of City and remain upon and be surrendered with the Premises, without disturbance, molestation, or injury unless designated by City to be removed, in which case Lessee shall remove the same prior to the Expiration Date or earlier termination of the Lease Term and repair any damage caused thereby.
- C. At the Expiration Date or upon the earlier termination of the Lease Term or Lessee's right to possession, Lessee shall surrender the Premises in good order and condition, reasonable wear and tear and casualty damage excepted, and shall deliver all keys to City.

13. LIENS

Lessee shall keep the Premises, the Building and the Land free from any liens arising out of work performed, material furnished, or obligations incurred due to Lessee's actions, the actions of Lessee's Permittees or contractors, or the failure of Lessee to comply with any law excluding, however, security interests in Lessee's personal property subordinate to City's lien rights. In the event any such lien does attach against the Premises, Building, or Land, and Lessee does not discharge the lien or post bond (which under law would prevent foreclosure or execution under the lien) within ten (10) days after demand by City, such event shall be a default by Lessee under this Lease and, in addition to City's other rights and remedies, City may take any action necessary to discharge the lien. Lessee shall pay City upon demand all costs or expenses (including reasonable attorney's fees and costs, whether or not suit be instituted) incurred by City by reason of attachment or discharge of such lien and shall indemnify, defend and hold City harmless for, from and against any and all liability, claims, or losses arising out of attachment of such lien.

14. MAINTENANCE.

Lessee shall, at its own cost, have all responsibilities for improvements to and maintenance of the Lease Area during the term of this Agreement.

Lessee shall take possession of the Premises in the following existing AS IS condition City shall have no obligation to prepare the Premises for Lessee's use.

At the expiration or earlier termination of this Lease, the Premises shall be returned to City in a condition as good as it was at the Commencement Date (fair wear and tear excepted) and, at City's option, inclusive of any improvements that may be approved. The respective obligations, covenants and agreements of City and Lessee with respect to renovation of the Premises, including the procedures for design, permitting and construction of improvements are more specifically set forth in Exhibit D.

15. ASSIGNMENT.

A. Lessee shall not assign or sublease any of its interest under this Agreement, nor permit any other person to occupy the Lease Area, without the prior written consent of the City, such consent not to be unreasonably withheld. The City may, as a condition of approval, require that any potential transferee submit biographical and financial information to the City at least 60 days prior to any transfer of Lessee's interest. Notwithstanding the foregoing, Lessee may assign this Agreement, upon 30 days written notice to the City, to any person controlling, controlled by or under common ownership with Lessee and assumes all obligations of Lessee under this Agreement.

16. DEFAULT; TERMINATION BY CITY.

A. The City may terminate this Agreement by giving Lessee 60 days written notice.

B. The City may place Lessee in default of this Agreement by giving Lessee 15 days written notice of Lessee's failure to timely pay the rent provided for herein or any other charges required to be paid by Lessee pursuant to this Agreement. During said 15-day notice period, Lessee shall cure said default; otherwise, the City may elect to terminate this Agreement or to exercise any other remedy allowed by law or equity.

C. If Lessee, through any fault of its own, at any time fails to maintain all insurance coverage required by this Agreement, the City shall have the right, upon written notice to Lessee, to immediately terminate this Agreement or to secure the required insurance at Lessee's expense.

D. Failure by the City to take any authorized action upon default by Lessee of any of its obligations hereunder shall not constitute a waiver of said default nor of any subsequent default by Lessee. Acceptance of rent and other fees by the City under the terms hereof for any period after a default by Lessee of any of its obligations shall not be deemed a waiver or estoppel of the City's right to terminate this Agreement for any subsequent failure by Lessee to comply with its obligations.

17. TERMINATION BY LESSEE.

Lessee may terminate this Agreement at any time that it is not in default in its obligations by giving the City written notice after the happening of any of the following events:

A. Issuance by a court of competent jurisdiction of an injunction in any way preventing or restraining Lessee's use of any portion of the Lease Area and the remaining in force of such injunction for a period of 30 consecutive days.

18. INDEMNIFICATION.

Lessee shall defend, indemnify and hold harmless the City and its elected or appointed officials, agents, boards, commissions and employees (hereinafter referred to collectively as the "City" in this Section) from all loss, damages or claims of whatever nature, including attorney's fees, expert witness fees and costs of litigation, that arise out of any act or omission of Lessee or its agents, employees and invitees (hereinafter referred to collectively as "Lessee" in this Section) in connection with Lessee's operations in the Lease Area and that result directly or indirectly in the injury to or death of any person or the damage to or loss of any property, or that arise out of the failure of Lessee to comply with any provision of this Agreement. The City shall in all instances, except for loss, damages or claims resulting from the sole negligence or fault of the City, be indemnified by Lessee against all such loss, damages or claims, regardless of whether the loss, damages or claims are caused in part by the negligence or fault of the City. The City shall give Lessee prompt notice of any claim made or suit instituted that may subject Lessee to liability under this Section, and Lessee shall have the right to compromise and defend the same to the extent of its own interest. The City shall have the right, but not the duty, to participate in

the defense of any claim or litigation with attorneys of the City's selection without relieving Lessee of any obligations hereunder. Lessee's obligations hereunder shall survive any termination of this Agreement or Lessee's activities in the Lease Area.

Lessee shall be solely responsible for, and shall indemnify, defend and hold harmless City, its elected officials, directors, officers, employees, agents, successors, and assigns for, from and against, any loss, damage, cost, expense, or liability directly or indirectly arising out of or attributable to Lessee's and Lessee's Permittees use, generation, storage, release, threatened release, discharge, disposal, or presence of Hazardous Materials on, under, or about the Premises, the Building or the Land, including without limitation: (a) all foreseeable consequential damages; (b) the costs of any required or necessary repairs, cleanup or detoxification of the Premises, the Building, or the Land, and the preparation and implementation of any closure, remedial, or other required plans; and (c) all reasonable costs and expenses incurred by City including but not limited to reasonable attorneys' fees. Notwithstanding the foregoing, Lessee may use in the Premises those Materials that are customarily used for general retail purposes (e.g., City approved cleaning solvents). Lessee's obligations hereunder shall survive the termination or earlier expiration of this Lease.

19. INSURANCE.

Lessee shall procure and at all times maintain the following types and amounts of insurance for its operations in the Lease Area:

- A. Commercial general liability and property damage insurance in the amount of \$1,000,000 combined single limit and catastrophic umbrella insurance in the amount of \$2,000,000 combined single limit in excess of the \$1,000,000 underlying coverage.
- B. Such other insurance as the City's Risk Manager determines to be necessary for Lessee's operations.

Such insurance shall be in a form, from a company and with deductibles acceptable to the City's Risk Manager; shall name the City as an additional insured; and shall require 30 days written notice to the City before modification or termination. The insurance must also include contractual liability coverage for the obligation of indemnity assumed in this Agreement. Lessee shall provide appropriate certificates of insurance to the City for all insurance policies required by this Section.

20. DAMAGE OR DESTRUCTION.

The City has no obligation to reimburse Lessee for the loss of or damage to fixtures, equipment or other personal property of Lessee, except for such loss or damage as is caused by the sole negligence or fault of the City or its officers, employees or agents. Lessee may insure such fixtures, equipment or other personal property for its own protection if it so desires.

21. SURRENDER OF POSSESSION.

Upon the expiration or termination of this Agreement, Lessee's right to occupy the Lease Area and exercise the privileges and rights herein granted shall cease, and it shall surrender and leave the Lease Area in good condition, normal wear and tear excepted. Unless otherwise provided herein, all trade fixtures, equipment, and other personal property installed or placed by Lessee on the Lease Area shall remain the property of Lessee, and Lessee shall have the right at any time during the term of this Agreement, and for an additional period of 90 days after its expiration, to remove the same from the Lease Area; provided that Lessee is not in default of any of its obligations hereunder and that Lessee shall repair, at its sole cost, any damage caused by such removal. Any property not removed by Lessee within said 90-day period shall become a part of the Right-of-Way, and ownership thereto shall vest in the City.

22. NOTICE.

All notices required or permitted to be given under this Agreement may be personally delivered or mailed by certified mail, return receipt requested, postage prepaid, to the following addresses:

TO THE CITY: City of Surprise
 Attention: Economic Development Department
 16000 North Civic Center Plaza
 Surprise, AZ 85374

WITH A COPY TO: City of Surprise
 Attention: City Attorney
 16000 North Civic Center Plaza
 Surprise, AZ 85374

TO LESSEE: _____

Any notice given by certified mail shall be deemed to be received on the next business day after the date of mailing. Either party may designate in writing a different address for notice purposes pursuant to this Section.

23. SEVERABILITY.

Should any provision of this Agreement be declared invalid by a court of competent jurisdiction, the remaining terms shall remain effective, provided that elimination of the invalid provision does not materially prejudice either party with regard to its respective rights and obligations.

24. TAXES AND LEASES.

A. Lessee shall pay any Leasehold tax, possessory-interest tax, sales tax, government property lease excise tax, personal property tax, transaction privilege tax or other exaction assessed or assessable as a result of its occupancy of the Lease Area under authority of this Agreement, including any such tax assessable on the City. In the event that laws or judicial decisions result in the imposition of a real property tax on the interest of the City, such tax shall also be paid by Lessee on a proportional basis for the period this Agreement is in effect.

B. Lessee shall, at its own cost, obtain and maintain in full force and effect during the term of this Agreement all leases and permits required for all activities authorized by this Agreement.

25. LITIGATION.

This Lease shall be governed by the laws of the State of Arizona. In the event of any litigation or arbitration between the City and Lessee arising under this Lease, each party shall bear its own cost of attorney's fees, expert witness fees and other costs incurred in connection with such litigation or arbitration. This Agreement shall be interpreted, applied and enforced according to the fair meaning of its terms and shall not be construed strictly in favor of or against either party, regardless of which party may have drafted any of its provisions.

26. RULES AND REGULATIONS.

Lessee shall at all times comply with all federal, state and local laws, ordinances, rules and regulations which are applicable to its operations and the Lease Area, including all laws, ordinances, rules and regulations adopted after the Effective Date. Lessee shall display to the City, upon request, any permits, leases or other evidence of compliance with such laws.

27. RIGHT OF ENTRY RESERVED.

A. The City shall have the right at all times to enter upon the Lease Area for any lawful purpose, provided such action does not unreasonably interfere with Lessee's use or occupancy of the Lease Area and that the City shall have access to the Communication Equipment itself only in emergencies or upon reasonable advance notice to Lessee.

B. Without limiting the generality of the foregoing, the City and any furnisher of utilities and other services shall have the right, at their own cost, to maintain existing and future utility, mechanical, electrical and other systems and to enter upon the Lease Area at all times to make such repairs, replacements or alterations thereto that may, in the opinion of the City, be deemed

necessary or advisable and from time to time to construct or install over, in or under the Lease Area such systems or parts thereof and, in connection with such maintenance, use the Lease Area for access to other parts of the Right-of-Way; provided that in the exercise of such right of access, repair, alteration or new construction, the City shall not unreasonably interfere with the use and occupancy of the Lease Area by Lessee.

C. Exercise of any of the foregoing rights by the City or others pursuant to the City's rights shall not constitute an eviction of Lessee, nor be made the grounds for any abatement of rent or any claim for damages.

28. MISCELLANEOUS.

This Agreement constitutes the entire agreement between the parties concerning the matters contained herein and supersedes all prior negotiations, understandings and agreements between the parties concerning such matters. No provision of this Agreement may be waived or modified except by a writing signed by the party against whom such waiver or modification is sought to be enforced. The terms of this Agreement shall be binding upon and inure to the benefit of the parties' successors and assigns.

29. EXHIBITS

The following exhibits (the "Exhibits") are attached hereto and incorporated herein by this reference:

Exhibit A	Lease Area
Exhibit B	Rules and Regulations

EXECUTED to be effective on the date specified above.

CITY OF SURPRISE

By: _____
Its: _____

ATTEST:

APPROVED AS TO FORM:

City Clerk

City Attorney

By: _____

Its: _____

STATE OF ARIZONA)

) ss.

County of Maricopa)

The foregoing document was acknowledged before me this ____ day of _____,
20__ by _____, in his or her capacity as _____
of the City of Surprise, an Arizona municipal corporation.

Notary Public

My Commission Expires:

STATE OF _____)

) ss.

County of _____)

The foregoing document was acknowledged before me this ____ day of _____,
20__, by _____, in his or her capacity as _____
of _____, a _____ corporation.

Notary Public

My Commission Expires:

(EXHIBIT A)

[Attach copy of approved Site Plan.]

DRAFT

EXHIBIT B

RULES AND REGULATIONS

1. Lessee will refer all contractors, contractor's representatives and installation technicians rendering any service to Lessee, to City for City's supervision, approval and control before performance of any contractual service. This provision shall apply to all work performed in the Building including installations of telephones, telegraph equipment, electrical devices and attachments, and installations of any nature affecting doors, walls, windows, ceilings, equipment or any other physical portion of Building.
2. No additional locks or bolts of any kind shall be placed upon any of the doors or windows by any Lessee nor shall any changes be made in existing locks or the mechanism thereof without City's prior written consent.
3. Movement in or out of the Building or Premises of furniture or equipment, or dispatch or receipt by Lessee of any merchandise or materials, shall be restricted to normal business hours, unless otherwise approved in advance by City. All such movement shall be under supervision of City and in the manner agreed between Lessee and City by prearrangement before performance. Such prearrangement initiated by Lessee will include determination by City and subject to its decision and control, as to the concerns that may prohibit any equipment or other item from being brought into the Building. Lessee is to assume all risk as to damage to items moved and injury to persons or public engaged or not engaged in such movement, including equipment, property, and personnel of City if damaged or injured as a result of acts in connection with carrying out this service for Lessee from time of entering property to completion of work; and City shall not be liable for acts of any person engaged in, or any damage or loss to any of said property or persons resulting from, any act in connection with such service performed for Lessee. Any hand trucks, carryalls or similar appliances used for the delivery or receipt of merchandise or equipment shall be equipped with rubber tires, side guards and such other safeguards as the Building shall reasonably require.
4. No signs, advertisements or notices shall be painted or affixed on or to any windows or doors, or other parts of the Building, except of such color, size and style and in such places, as shall be first approved in writing by City and in compliance with all local ordinances governing such items.
5. No portion of the Premises shall at any time be used for sleeping or lodging quarters, or for any residential purpose whatsoever (the term "residential" being construed in its widest possible and most inclusive meaning).
6. In the event Lessee requires the disposal of foodstuffs, edible matter, or any materials attractive to pests or vermin, Lessee shall provide at its sole cost and expense a vermin-proof receptacle for the disposal of such materials, and take active measure to control pests and vermin. No Lessee shall cause or permit any unusual or objectionable odors to be produced upon or permeate from the Leased Premises.

7. City will not be responsible for lost or stolen personal property, equipment, money or jewelry from Lessee's area or public rooms regardless of whether such loss occurs when the area is locked against entry or not.

8. No birds or animals shall be brought into or kept in or about the Building, except assistance animals, or animals used as part of the lessee's research and development activities as outlined in its Business Plan, Executive Summary attached in Exhibit C.

9. Employees of City shall not receive or carry messages for or to Lessee or other person, nor contract with or render free or paid services to Lessee or Lessee's agents, employees, or invitees, except as detailed in Exhibit D: AZ TechCelerator Programs and Services.

10. City will not permit entrance to Lessee's Premises by use of pass keys controlled by City to any person at any time without written permission by Lessee, except employees, contractors, or service personnel directly supervised by City.

11. The entries, passages, doors, or hallways shall not be blocked or obstructed; no rubbish, litter, trash, or material of any nature shall be placed, emptied or thrown into these areas; and Lessee, Lessee's agents, employees or invitees to or from the Premises shall not use such areas at any time except for ingress or egress.

12. The City desires to maintain the highest standards of environmental comfort and convenience for all Lessees. It will be appreciated if any undesirable conditions or lack of courtesy or attention are reported directly to the management. Lessee shall give immediate notice to the Building Manager and City in case of accidents in the Premises or in the Common Areas or of defects therein or in any fixtures or equipment, or of any known emergency in the Building.

13. Lessee shall not make, or permit to be made, (except for fire and burglar alarms) any unseemly, excessively loud, or disturbing noises, or interfere with occupants of this or neighboring buildings or premises, or those having business with them.

14. City shall have the right to make such other and further reasonable rules and regulations as in the judgment of City may from time to time be needful for the safety, appearance, care and cleanliness of the Building and the Land, and for the preservation of good order therein. City shall not be responsible to Lessee for any violations of rules and regulations by other Lessees.

15. All Lessees shall adhere to and obey all such parking control measures as may be placed into effect by the City through the use of signs, identifying decals or other instructions. No vehicles of any kind shall be brought into or kept on the Premises except in designated areas specified for parking of such vehicles.

16. No objects larger or heavier than the Building is limited to carry shall be brought into or installed on the Premises. The City shall have the power to prescribe the weight and position of such objects, which shall, if considered necessary by the City, be required to be supported by

such additional materials placed on the floor as the City may direct, and at the expense of the Lessee.

17. All Lessees shall see that doors of their Premises are closed and securely locked before leaving the Building and must observe strict care not to leave such doors and so forth open and exposed to the weather or other elements, and each Lessee shall exercise extraordinary care and caution that all water faucets or water apparatus are entirely shut off before the Lessee or the Lessee's employees leave the Premises, and that all electricity, gas, air conditioning and heating shall likewise be carefully shut off, so as to prevent waste or damage, where controlled by Lessee.

18. Canvassing, soliciting and peddling in the Building are prohibited. All Lessees shall cooperate to prevent the same.

19. All nail holes are to be patched and repaired in Lessee's suite by Lessee upon vacating Premises.

20. All holiday decorations and other temporary or special decorations must be flame-retardant. No live holiday trees or live flame candles are to be used in the Premises or in the Building. No decorations shall be hung on the exterior windows or exterior walls of the Building.